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OFFICE OF PETITIONS

In re Application of :
J. Don Chen :
Application No. 09/819,104 : ON PETITION
Filed: 27 March, 2001 :
Attorney Docket No. UMG-030 :

This a decision on the petition, filed on 14 August, 2002, under 37 CFR 1.137(b),¹ to revive the above-identified application.

The petition is granted.

The application became abandoned on 15 December, 2001, for failure to timely submit substitute drawings in compliance with 37 CFR 1.84 and a substitute CRF of the "Sequence Listing" as required by 37 CFR 1.821(e), (f), (g), 1.825(b), or (d) as

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

required by the Notice to File Missing Parts of Nonprovisional Application filed on 14 May, 2001,² which set a two (2) month period for reply. A five (5) month extension of the time for reply in accordance with 37 CFR 1.136 was obtained. A Notice of Incomplete Reply was mailed on 13 March, 2002, informing applicants that drawings and Sequence Listing were required. Notice of Abandonment was mailed on 18 June, 2002.

The statement contained in the instant petition does not set forth that the entire delay from the due date of the required reply to the date of the filing of a grantable petition was unintentional as required by 37 CFR 1.137(b)(3). However, the statement contained in the instant petition is being so construed. Petitioner **must** notify the Office if this is not a correct interpretation.

The application is being forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (703)308-6918.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

²Although the file copy of the Notice to File Missing Parts of Nonprovisional Application shows a mailing date of 11 May, 2001, the copy of the Notice returned by applicants shows a mailing date of 14 May, 2001. The Office is therefore construing the mailing date of the Notice as 14 May, 2001.